

Message Text

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ACTION ERDA-07

INFO OCT-01 NEA-10 ISO-00 FEA-01 ACDA-10 CIAE-00
INR-07 IO-13 L-03 NSAE-00 NSC-05 EB-07 NRC-07
OES-07 DODE-00 SS-15 PM-04 COME-00 JUSE-00 AID-05
/102 W

-----250559Z 032587 /14

R 250255Z MAY 77
FM AMCONSUL BOMBAY
TO SECSTATE WASHDC 7323
INFO AMEMBASSY NEW DELHI

UNCLAS SECTION 1 OF 3 BOMBAY 1200

E. O. 11652: N/A
TAGS: TECH, ENRG, PARM, IN
SUBJ: TARAPUR FUEL STORAGE

REF : BOMBAY 1196

THERE FOLLOWS REVISED TEXT OF AGREEMENT FOR STUDY OF FUEL
STORAGE SPENT AT TARAPUR AS RECEIVED FROM ATOMIC POWER
AUTHORITY ON MAY 23 UNDER SIGNATURE OF V.D. SONDE, JOINT
SECRETARY.

QUOTE
AGREEMENT BETWEEN THE UNITED STATES ENERGY RESEARCH AND
DEVELOPMENT ADMINISTRATION ACTING ON BEHALF OF THE GOVERN-
MENT OF THE UNITED STATES OF AMERICA HEREINAFTER REFERRED
TO AS ERDA WHICH EXPRESSIONS SHALL INCLUDE ITS SUCCESSORS
AND ASSIGNS AND THE PRESIDENT OF INDIA ACTING THROUGH THE
DEPARTMENT OF ATOMIC ENERGY (DAE) OF THE GOVERNMENT OF
INDIA, HEREINAFTER CALLED GOI WHICH EXPRESSION SHALL,
UNLESS REPUGNANT TO THE CONTEXT, INCLUDE HIS SUCCESSORS
AND ASSIGNS.

WHEREAS THE GOVERNMENT OF THE UNITED STATES AND THE GOVERN-
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MENT OF INDIA HAVE BEEN CO-OPERATING IN THE CIVIL USES OF
ATOMIC ENERGY PURSUANT TO AN AGREEMENT FOR COOPERATION
WHICH WAS ENTERED INTO AND WHICH IS IN FORCE FROM OCTOBER
25, 1963;

WHEREAS THE PARTIES TO THIS AGREEMENT CONSIDER IT DESIRABLE
THAT A STUDY OF THE POTENTIAL AND METHOD OF INCREASING THE

SPENT FUEL STORAGE CAPACITY OF THE TARAPUR ATOMIC POWER STATION SHOULD BE CONDUCTED;

AND WHEREAS ERDA IS WILLING TO PERFORM SUCH A STUDY; ON THE GOI AGREEING TO MAKE AVAILABLE TO ERDA REPORTS RELATING TO APPLICATION AND USE OF THE INFORMATION PROVIDED BY ERDA AND ITS CONTRACTOR UNDER THIS AGREEMENT;

AND WHEREAS ERDA HAS AUTHORITY TO ENGAGE IN SUCH ACTIVITIES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED AND THE ENERGY REORGANISATION ACT OF 1974 BOTH OF UNITED STATES OF AMERICA. NOW, THEREFORE, ERDA AND THE GOVERNMENT OF INDIA AGREE AS FOLLOWS:-

CLAUSE 1: "ERDA, IF NECESSARY THROUGH OR WITH THE ASSISTANCE OF ITS CONTRACTORS WILL CONDUCT A STUDY COVERING THE FEASIBILITY AND METHOD FOR INCREASING THE SPENT FUEL STORAGE CAPACITY OF THE TARAPUR ATOMIC POWER STATION. THE SCOPE OF THE STUDY SHALL BE AS FOLLOWS:

1. A DETERMINATION OF STRUCTURAL ADEQUACY AND NUCLEAR SAFETY ASPECTS.
2. THE ADEQUACY OF COOLING FOR ADDITIONAL HEAT LOAD AND DETAILS OF MODIFICATIONS NECESSARY, IF ANY.
3. FEASIBILITY AND PROCEDURES OF INSTALLATION

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UNDER PRESENT CONDITIONS, INCLUDING ALTERNATIVE PLANS FOR HANDLING FUEL ALREADY IN STORAGE AS WELL AS EXISTING RACKS.

4. DETERMINATION OF TECHNIQUES, SPECIAL EXPERTISE AND/OR SPECIAL EQUIPMENT AND MATERIALS INVOLVED.
5. ESTIMATES OF INSTALLATION TIME, COST AND STORAGE GAIN FOR SUCH RACKS.
6. ANY OTHER ASPECT THAT MAY ARISE FROM A CONSIDERATION OF THE ABOVE AND MAY NEED TO BE PURSUED TO ACHIEVE THE STUDY'S OBJECTIVES.

UPON COMPLETION OF THE ABOVE MENTIONED STUDY (HEREAFTER REFERRED TO AS THESE STUDIES) ERDA WILL PROVIDE GOI WITH A REPORT OF ITS FINDINGS AND CONCLUSIONS. THE REPORT WILL BE COMPLETED AS

SOON AS P USIBLE CONSISTENT WITH THE NEED FOR
ACCURACY AND COMPLETENESS.

CLAUSE 2: THE GOI AGREES TO AFFORD FULL ACCESS CONSISTENT
WITH THE NEEDS OF THIS AGREEMENT BY AUTHROIZED
ERDA REPRESENTATIVES TO TARAPUR ATOMIC POWER
STATION. GOI ALSO AGREES TO PROVIDE ERDA AND ITS
AUTHORIZED REPRESENTATIVES WITH OPERATING DATA,
TECHNICAL SPECIFICATIONS, AND OTHER INFORMATION
NECESSARY AND PERTINENT TO THE PERFORMANCE OF
THE STUDY TO THE EXTENT AVAILABLE WITH DAE OF THE
GOI. FURTHERMORE, GOI AGREES TO SUPPLY ERDA AND
ITS REPRESENTATIVES WITH SEISMIC DATA AND
RELATED INFORMATION NECESSARY AND PERTINENT TO
THE PERFORMANCE OF THE STUDY TO THE EXTENT
AVAILABLE WITH DAE OF THE GOI.

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CLAUSE 3: ALTHOUGH ERDA WILL EXERCISE EVERY REASONABLE
EFFORT TO COMMENCE AND COMPLETE THE STUDY, GOI
AGREES THAT, IN THE EVENT ERDA IS UNABLE FOR ANY
REASON TO COMMENCE OR COMPLETE THE STUDY, ERDA
WILL INCUR NO LIABILITY WHATSOEVER AS A RESULT
THEREOF.

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ACTION ERDA-07

INFO OCT-01 NEA-10 ISO-00 FEA-01 ACDA-10 CIAE-00
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INFO AMEMBASSY NEW DELHI

UNCLAS SECTION 2 OF 3 BOMBAY 1200

E. O. 11652: N/A

TAGS: TECH, ENRG, PARM, IN

SUBJ: TARAPUR FUEL STORAGE

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CLAUSE 4: ERDA WILL BEAR ALL COSTS OF THE STUDY EXCEPT THAT THE GOI WILL PROVIDE WITHOUT CHARGE TO ERDA SEISMIC INFORMATION AND OTHER NECESSARY AND PERTINENT DATA WHICH IS IN THE POSSESSION OF THE GOI. MOREOVER, GOI WILL MAKE AVAILABLE TO THE EXTENT POSSIBLE UPON REQUEST BY ERDA KNOWLEDGEABLE SCIENTIFIC AND TECHNICAL PERSONNEL TO ASSIST ERDA REPRESENTATIVES IN PERFORMING THE STUDY.

CLAUSE 4(A): CONSISTENT WITH THE PROVISIONS OF CLAUSES 7 AND 8 HEREIN, ON COMPLETION OF THE STUDY, ERDA WILL FURNISH AT NO COST TO GOI INFORMATION DEVELOPED BY THE STUDY INCLUDING DESIGN BASIS, DESIGN DRAWINGS, SPECIFICATIONS AND STUDY REPORT.

CLAUSE 5: THE APPLICATION OF SUCH INFORMATION PROVIDED UNDER CLAUSE 4(A) ABOVE SHALL BE THE RESPONSIBILITY OF THE GOI AND ERDA DOES NOT WARRANT THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION AND DOES NOT WARRANT THE SUITABILITY OF SUCH INFORMATION FOR ANY PARTICULAR USE OR APPLICATION BUT THE REPORT TO BE PROVIDED UNDER THIS AGREEMENT WILL DISCLOSE THE RELATIONSHIP OF THE RECOMMENDATIONS CONTAINED THEREIN TO APPLICABLE US CRITERIA.

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CLAUSE 6: IF THE GOI MAKES USE OF THE

INFORMATION SUPPLIED IN THE STUDY BY INSTALLING EQUIPMENT OR MOA FYING TARAPUR'S SPENT FUEL STORAGE FACILITIES, IT WILL PROVIDE ERDA WITH A FULL REPORT OF SUCH INSTALLATION AND WILL ALSO PROVIDE PERIODIC OPERATIONAL REPORTS CONTAINING TECHNICAL DATA RELATING TO THE EMPLOYMENT OF THE INFORMATION PROVIDED IN THE STUDY.D

CLAUSE 7: PATENTS

(A) WITH RESPECT TO ANY INVENTION OR DISCOVERY WHICH IS MADE OR CONCEIVED DURING THE PERIOD OF, AND IN THE COURSE OF OR UNDER THIS AGREEMENT, ERDA ON BEHALF OF THE UNITED STATES GOVERNMENT, AND GOI HEREBY AGREE THAT:

(1) IF MADE OR CONCEIVED BY PERSONNEL OF ERDA OR ITS CON-

TRACTORS DURING THE COURSE OF THIS STUDY:

(I) THE UNITED STATES GOVERNMENT SHALL ACQUIRE ALL RIGHTS, TITLE AND INTEREST IN AND TO AND SUCH INVENTION OR DISCOVERY IN ITS OWN COUNTRY AND IN ALL THIRD COUNTRIES PROVIDED HOWEVER THAT THE GOI SHALL BE GRANTED A NONEXCLUSIVE, IRREVOCABLE PAID-UP LICENSE, WITH THE RIGHT TO GRANT SUB-LICENSES THEREUNDER; AND

(II) THE GOVERNMENT OF INDIA SHALL ACQUIRE ALL RIGHT, TITLE AND INTEREST IN AND TO ANY SUCH INVENTION OR DISCOVERY IN ITS OWN COUNTRY, PROVIDED HOWEVER THAT ERDA SHALL RECEIVE A NONEXCLUSIVE, IRREVOCABLE, PAID-UP LICENSE, WITH THE RIGHT TO GRANT SUB-LICENSES THEREUNDER.

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(2) IF MADE OR CONCEIVED BY PERSONNEL OF ERDA OR THE GOI OR THEIR CONTRACTORS OTHER THAN IN ACCORDANCE WITH SUB-PARAGRAPH (1) ABOVE WHEN EMPLOYING INFORMATION WHICH HAS BEEN COMMUNICATED UNDER THIS AGREEMENT, THE CONTRACTING PARTY MAKING THE INVENTION OR DISCOVERY SHALL ACQUIRE ACZ RIGHT, TITLE AND INTEREST IN AND TO ANY SUCH INVENTION OR DISCOVERY IN ALL COUNTRIES, PROVIDED HOWEVER THAT THE OTHER CONTRACTING PARTY SHALL BE GRANTED A NONEXCLUSIVE IRREVOCABLE, PAID-UP LICENSE, WITH THE RIGHT TO GRANT SUB-LICENSES THEREUNDER.

(B) NEITHER THE UNITED STATES NOR GOI SHALL DISCRIMINATE AGAINST CITIZENS OF THE OTHER WITH RESPECT TO GRANTING ANY LICENSE OR SUB-LICENSE UNDER ANY INVENTION PURSUANT TO SUB-PARAGRAPHS (A)(I) AND (A)(2) ABOVE.

(C) THE UNITED STATES AND THE GOI SHALL EACH ASSUME THE RESPONSIBILITY TO PAY AWARDS OR COMPENSATION REQUIRED TO BE PAID TO ITS EMPLOYEES ACCORDING TO THE LAWS OF ITS COUNTRY.

CLAUSE 8: EXCHANGE OF INFORMATION.

(A) NEITHER ERDA NOR GOI NOR EXPERTS DESIGNATED BY THEM SHALL EXCHANGE PROPRIETARY INFORMATION UNLESS SUCH INFORMATION IS SPECIFICALLY IDENTIFIED AS SUCH AND ITS USE AGREED UPON BY ERDA AND GOI. IN THE EVENT SUCH AN EXCHANGE DOES OCCUR, ERDA AND GOI SHALL TAKE ALL NECESSARY STEPS TO PROTECT PROPRIETARY INFORMATION IN ACCORDANCE WITH PARAGRAPH B, BELOW AND IN ACCORDANCE WITH THE LAWS OF THEIR RESPECTIVE COUNTRIES AND WITH INTERNATIONAL LAW.

(B) IN GENERAL, INFORMATION EXCHANGED IN CONNECTION WITH THIS AGREEMENT MAY BE MADE AVAILABLE FOR PUBLIC DISSEMINATION WITH MUTUAL CONSENT. HOWEVER IT IS RECOGNIZED THAT CERTAIN INFORMATION MADE AVAILABLE MAY CONTAIN INDUSTRIAL PROPERTY OF A PROPRIETARY NATURE. SUCH PROPERTY, WHICH MAY INCLUDE

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TRADE SECRETS, INVENTIONS, PATENT INFORMATION AND 'KNOW-HOW', AND WHICH WAS ACQUIRED BY EITHER ERDA OR GOI PRIOR TO OR OUTSIDE THE COURSE OF ACTIVITIES CONDUCTED UNDER THIS AGREEMENT, SHALL BE DEFINE VKSLR THE PURPOSE OF AYIS AGREEMENT AS INFORMATION WHICH:

- (1) IS OF A TYPE CUSTOMARILY HELD IN CONFIDENCE BY COMMERCIAL FIRMS;
- (2) IS NOT GENERALLY KNOWN OR PUBLICLY AVAILABLE FROM OTHER SOURCES;
- (3) HAS NOT PREVIOUSLY BEEN MADE AVAILABLE TO OTHER PARTY SUPPLYING IT EXCEPT UNDER AN AGREEMENT PROTECTING ITS CONFIDENTIALITY; AND

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R 250255Z MAY 77
FM AMCONSUL BOMBAY
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UNCLAS SECTION 3 OF 3 BOMBAY 1200

E. O. 11652: N/A
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(4) IS NOT ALREADY IN THE POSSESSION OF THE RECIPIENT PARTY

OR ITS CONTRACTOR.

(C) INDUSTRIAL PROPERTY OF A PROPRIETARY NATURE, AS DEFINED ABOVE, SHALL BE RESPECTED BY THE RECIPIENT PARTY, SHALL NOT BE USED FOR COMMERCIAL PURPOSES, AND SHALL NOT, EXCEPT AS MAY BE REQUIRED BY THE LAWS APPLICABLE TO ERDA AND GOI, BE MADE PUBLIC WITHOUT THE CONSENT OF THE PARTY ORIGINATING SUCH INDUSTRIAL PROPERTY. INDUSTRIAL PROPERTY OF A PROPRIETARY NATURE WHICH IS EXCHANGED SHALL BE CLEARLY MARKED BY THE SENDING PARTY. DISSEMINATION OF SUCH INFORMATION WILL BE LIMITED TO:

(1) PERSONS WITHIN OR EMPLOYED BY THE RECIPIENT PARTY AND TO OTHER CONCERNED AGENCIES OF THE RECIPIENT PARTY'S GOVERNMENT; AND

(2) PRIME OR SUBCONTRACTORS OF THE RECIPIENT PARTY'S GOVERNMENT FOR USE ONLY WITHIN THE FRAMEWORK OF ITS CONTRACTS RELATING TO THE SUBJECT MATTER OF THE INFORMATION SO UNCLASSIFIED

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DISSEMINATED.

ERDA AND GOI SHALL EACH EXERCISE ITS BEST EFFORTS TO ENSURE THAT DISSEMINATION OF INDUSTRIAL PROPERTY OF A PROPRIETARY NATURE RECEIVED UNDER THIS AGREEMENT IS CONTROLLED AS PRESCRIBED HEREIN.

(D) FOR THE PURPOSE OF THIS PROPRIETARY INFORMATION ARTICLE, ERDA SHALL BE DEEMED TO INCLUDE ITS CONTRACTORS AND GOI SHALL BE DEEMED TO INCLUDE ITS CONTRACTORS.

CLAUSE 9: GOVERNMENT OF INDIA AGREES TO INDEMNIFY AND HOLD HARMLESS ERDA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND PERSONS ACTING ON THEIR BEHALF, INCLUDING ITS CONTRACTORS AND SUBCONTRACTORS, AGAINST ANY AND ALL DAMAGES, LIABILITIES, OR COSTS INCURRED BY GOI, THE GOVERNMENT OF INDIA OR ANY OTHER PERSON WHICH MAY ARISE FROM THE USE OR APPLICATION OF THE INFORMATION PROVIDED BY ERDA OR ITS CONTRACTORS TO GOI UNDER THIS AGREEMENT; PROVIDED THAT

INDEMNITY WILL NOT APPLY TO ANY LIABILITY FOR VIOLATION BY GOI OF PROPRIETARY RIGHTS OR PATENT RIGHTS WITH RESPECT TO ANY PROPRIETARY OR PATENTED INFORMATION PROVIDED BY ERDA OR ITS CONTRACTORS, WHICH PROPRIETARY OR PATENTED INFORMATION HAS NOT BEEN SO IDENTIFIED.

CLAUSE 10: NO MEMBER OF OR DELEGATE TO THE CONGRESS OF THE UNITED STATES OF AMERICA OR RESIDENT COMMISSIONER OF THE UNITED STATES OF AMERICA, SHALL BE ADMITTED TO ANY SHARE OR PART OF THIS CONTRACT OR TO ANY BENEFIT THAT MAY ARISE THEREFROM BUT THIS PROVISION SHALL NOT BE CONSTRUED TO EXTEND TO THIS CONTRACT IF MADE WITH A CORPORATION FOR ITS GENERAL BENEFIT.

CLAUSE 11: THE GOVERNMENT OF INDIA WARRANTS THAT NO PERSON OR SELLING AGENCY HAS BEEN EMPLOYED OR RETAINED TO SOLICIT OR SECURE THIS CONTRACT UPON AN AGREEMENT OR UNDERSTANDING FOR

A COMMISSION, PERCENTAGE, BROKERAGE, OR CONTINGENT FEE,
EXCEPTING BONAFIDE EMPLOYEES OR BONAFIDE ESTABLISHED
COMMERCIAL OR SELLING AGENCIES MAINTAINED BY THE GOVERNMENT
OF INDIA FOR THE PURPOSE OF SECURING BUSINESS. FOR BREACH
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OR VIOLATION OF THIS WARRANTY THE U.S. GOVERNMENT SHALL
HAVE THE RIGHT TO ANNUL THIS CONTRACT WITHOUT LIABILITY OR
IN ITS DISCRETION TO RECOVER THE FULL AMOUNT OF SUCH
COMMISSION, PERCENTAGE, BROKERAGE, OR CONTINGENT FEE.

CLAUSE 12: ARBITRATION

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREE-
MENT, ALL DISPUTES CONCERNING QUESTIONS OF FACT WHICH MAY
ARISE UNDER THIS AGREEMENT AND WHICH ARE NOT DISPOSED OF BY
MUTUAL AGREEMENT, SHALL BE REFERRED TO ARBITRATION BY A
BOARD COMPOSED OF THREE ARBITRATORS. ONE OF SUCH ARBITRATORS
SHALL BE APPOINTED BY ERDA, ONE SHALL BE APPOINTED BY GOI
AND THE THIRD ARBITRATOR SHALL BE SELECTED BY THE FIRST TWO.
IN THE EVENT THAT THE FIRST TWO ARBITRATORS SO SELECTED ARE
UNABLE TO AGREE UPON THE THIRD ARBITRATOR, THEN THE ADMINIS-
TRATOR OF ERDA AND THE CHAIRMAN OF THE ATOMIC ENERGY COMMI-
SSION OF INDIA SHALL MUTUALLY AGREE UPON AND DESIGNATE THE
PERSON TO ACT AS THIRD ARBITRATOR.

THE ARBITRATION PROCEEDINGS SHALL BE IN ACCORDANCE WITH THE
RULES ESTABLISHED BY THE AMERICAN ARBITRATION ASSOCIATION
FOR COMMERCIAL ARBITRATION. THE DECISION OF A MAJORITY OF
THE ARBITRATORS ON THE ARBITRATION SHALL BE FINAL AND
BINDING. ALLOCATION OF THE COSTS OF ARBITRATION SHALL BE
AS DETERMINED BY THE BOARD OF ARBITRATORS, PROVIDED
HOWEVER, THAT NEITHER PARTY SHALL BE OBLIGED TO PAY THE
COSTS OF THE OTHER PARTY'S ARBITRATOR.

CLAUSE 13: THE SIGNATORIES TO THIS AGREEMENT REPRESENT THAT
THEY HAVE COMPLETE AUTHORITY TO COMMIT THEIR RESPECTIVE
GOVERNMENTS TO ALL THE UNDERTAKINGS SET FORTH IN THIS
AGREEMENT.

CLAUSE 14: THIS CONTRACT SHALL BE CONSTRUED ACCORDING TO THE
LAWS APPLICABLE IN THE
FEDERAL COURTS OF THE UNITED STATES
OF AMERICA FOR CONTRACTS IN THE UNITED STATES OF AMERICA
TO WHICH THE GOVERNMENT OF THE UNITED STATES OF AMERICA IS
A PARTY.

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(DATE) TITLE ERDA
ON BEHALF OF THE UNITED

STATES OF AMERICA

(DATE) TITLE
FOR AND ON BEHALF OF THE
PRESIDENT OF INDIA

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